



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS-SC-16-0042; SC16-948-1 FR]

Irish Potatoes Grown in Colorado; Modification of the Handling Regulation for Area No. 2

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Colorado Potato Administrative Committee, Area No. 2 (Committee) to revise the grade requirement currently prescribed for 1½-inch minimum to 2¼-inch maximum diameter (Size B) potatoes under the Colorado potato marketing order (order). The Committee locally administers the order and is comprised of producers and handlers of potatoes operating within the area of production. This rule relaxes the current minimum grade requirement for Size B red potatoes from U.S. Commercial grade or better to U.S. No. 2 grade or better. Relaxing this grade requirement will allow area handlers to supply new markets with U.S. No. 2 grade Size B red potatoes and is expected to benefit producers, handlers, and consumers.

DATES: Effective November 28, 2016.

FOR FURTHER INFORMATION CONTACT: Sue Coleman, Marketing Specialist, or Gary D. Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Sue.Coleman@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the grade requirement currently prescribed for Size B potatoes under the order. This rule relaxes the current minimum grade requirement for Size B red potatoes from U.S. Commercial grade to U.S. No.

2 grade. This change was unanimously recommended by the Committee at a meeting held on March 17, 2016.

Section 948.22 of the order authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the order's production area. Section 948.21 authorizes the modification, suspension, or termination of regulations issued pursuant to § 948.22.

Under the Colorado potato marketing order, the State of Colorado is divided into three areas of regulation for marketing order purposes. These include: Area 1, commonly known as the Western Slope; Area 2, commonly known as San Luis Valley; and Area 3, which consists of the remaining producing areas within the State of Colorado not included in the definitions of Area 1 or Area 2. Currently, the order only regulates the handling of potatoes produced in Area 2 and Area 3. Regulation for Area 1 has been suspended.

The grade, size, and maturity requirements specific to the handling of potatoes grown in Area 2 are contained in § 948.386 of the order. The current handling regulation requires that, for all varieties, Size B potatoes (1½-inch minimum to 2¼-inch maximum diameter, as designated in the

U.S. Standards for Grades of Potatoes) may be handled under the order, if such potatoes meet or exceed the requirements of the U.S. Commercial grade.

At the March 17, 2016, Committee meeting, industry participants indicated to the Committee that there is demand in several markets, including the food service market, for Size B, U.S. No. 2 grade red potatoes. They further stated that the order's current grade requirement for Size B potatoes (U.S. Commercial grade or better) precludes handlers from supplying this growing and profitable market. Relaxing the grade requirement for Size B red potatoes will allow area handlers to compete with other domestic potato producing regions. This change will effectively lower the allowable grade for red varieties of Size B potatoes from U.S. Commercial grade or better to U.S. No. 2 grade or better.

Relaxing the grade requirement to allow shipments of U.S. No. 2 grade Size B red potatoes should make more potatoes available to consumers and should allow Area 2 handlers to move more of the area's potato production into the fresh market. This change is expected to benefit producers, handlers, and consumers of potatoes.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 66 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 150 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

During the 2014-2015 marketing year, the most recent full marketing year for which statistics are available,

14,075,876 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on information reported by USDA's Market News Service, the average f.o.b. shipping point price for the 2014-2015 Colorado potato crop was \$8.60 per hundredweight. Multiplying \$8.60 by the shipment quantity of 14,075,876 hundredweight yields an annual crop revenue estimate of \$121,052,534. The average annual fresh potato revenue for each of the 66 handlers is therefore calculated to be \$1,834,129 (\$121,052,534 divided by 66), which is less than the SBA threshold of \$7,500,000. Consequently, on average, most of the Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for the 2014 Colorado fall potato crop was \$8.25 per hundredweight. Multiplying \$8.25 by the shipment quantity of 14,075,876 hundredweight yields an annual crop revenue estimate of \$116,125,977. The average annual fresh potato revenue for each of the 150 Colorado Area No. 2 potato producers is therefore calculated to be approximately \$774,173 (\$116,125,977 divided by 150), which is greater than the SBA threshold of \$750,000.

Consequently, on average, many of the Area No. 2 Colorado potato producers may not be classified as small entities.

This final rule relaxes the minimum grade requirement prescribed for 1½-inch minimum diameter to 2¼-inch maximum diameter (Size B) red potatoes under the order. Currently, the handling of Size B potatoes is allowed if the potatoes otherwise meet or exceed the requirements of the U.S. Commercial grade standard. This change will effectively lower the minimum grade requirement for Size B red potatoes from U.S. Commercial grade or better to U.S. No. 2 grade or better. Relaxing the grade requirement will allow Colorado Area 2 handlers to supply markets with U.S. No. 2 grade Size B red potatoes and enable them to better compete with the other domestic potato producing regions. This change in the handling regulations is expected to benefit producers, handlers, and consumers. All other requirements in the order's handling regulations would remain unchanged. Authority for this action is contained in §§ 948.21 and 948.22 of the order.

This relaxation is expected to benefit producers, handlers, and consumers of Colorado Area 2 potatoes by allowing a greater quantity of potatoes from the production area to enter the fresh market. The anticipated increase

in volume is expected to translate into greater returns for handlers and producers, and more purchasing options for consumers.

After discussing possible alternatives to this change, the Committee determined that a relaxation in the grade requirement for Size B red potatoes should meet the industry's current needs while maintaining the integrity of the order's quality objectives. During its deliberations, the Committee considered making no changes to the handling regulation, as well as relaxing the grade requirement for all Size B potatoes. The Committee believes that a relaxation in the handling regulation for Size B red potatoes is necessary to allow handlers to pursue new markets, but lowering the grade requirement for all other types and varieties of Size B potatoes to U.S. No. 2 grade or better could erode the quality reputation of the area's production. Therefore, the Committee found that there were no other viable alternatives to the proposal as recommended.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178,

(Generic Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule relaxes the minimum grade requirements under the Colorado Area 2 potato marketing order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry, and all

interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 17, 2016, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 1, 2016 (81 FR 50406). Copies of the rule were made available to all interested Colorado potato producers and handlers. Finally, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending September 30, 2016, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by

the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping potatoes from the 2016 crop, and handlers want to take advantage of the relaxation as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948 - IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 948.386, paragraph (a)(3) is revised to read as follows:

§ 948.386 Handling regulation.

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(a) * *

(3) 1½-inch minimum to 2¼-inch maximum diameter (Size B). U.S. Commercial grade or better, except that red varieties may be U.S. No. 2 grade or better.

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Dated: November 18, 2016

Bruce Summers
Associate Administrator
Agricultural Marketing Service

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